

LABOUR DEPARTMENT

The 5th June, 1986

No. 9/9/86-6Lab./4066.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of the Municipality, Yamuna Nagar:—

BEFORE SHRI R. N. BATRA, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 450/1983

between

THE MANAGEMENT OF M/S MUNICIPALITY
YAMUNA NAGAR AND ITS WORKMEN

Present:—

Shri N. R. Munjal for the workmen.

Shri S. C. Bindra for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the Management of M/s Municipality Yamuna Nagar and its workmen, to this Tribunal for adjudication:—

- (1) Whether the following categories of workmen of the Municipal Committee, Yamunanagar are entitled to the same scale of pay which the Haryana Government has sanctioned for these categories of employees with effect from 1st April, 1979? If so, with what details?

(1) Workmen of Fire Brigade.

(2) Malies.

(3) Road Gang Workmen.

- (2) Whether the workmen who were provided with winter uniforms in April,

1982 are entitled to the sewing charges? If so, with what details?

- (3) Whether the Octroi Moharars are entitled to cycle allowance? If so, with what details?

- (4) Whether the peons belonging to Improvement Trust and working as peons in the Municipal Committee are entitled to same scale of pay as other peons of the Municipal Committee Yamuna Nagar? If so, with what details?

2. Notices were issued to both the parties. In the claim statement, dated 4th September, 1984, it was alleged that the workers of fire brigade/Malies and Road Gang workmen were entitled to the scale, which the Government of Haryana had sanctioned with effect from 1st April, 1979. It was further alleged that the workmen, who were provided winter uniforms in April, 1982 were entitled to the sewing charges at the rate of Rs. 200 for each uniform. It was also alleged that the Octroi Moharars were entitled to the Cycle Allowance at the rate of Rs. 50 per month and further, that the peons belonging to the Improvement Trust, Yamunanagar who were working in Municipal Committee were entitled to same scale of pay as other peons of the Municipal Committee Yamunanagar.

3. The Management in its written statement filed on 7th December, 1984, pleaded that the revised grades of Malies and Road Gang workmen were revised with effect from 1st April, 1979, but the revised grade the employees of the Fire Brigade had been sanctioned by the State Government with effect from 15th February, 1982, the date from which the service Rules came into force. It was further alleged that the Unions of a number of Municipalities in the State had moved a Writ Petition in the Hon'ble Punjab and Haryana High Court demanding certain reliefs including the matter concerning the grades and as such this matter was *sub judice*. It was further pleaded that the workers used to be provided uniforms duly stitched, but in the winter of 1981-82, the workmen insisted on providing only cloth and offered to get the same stitched from the tailors of their own choice. It was pleaded that on the basis of quotations called from the different tailors, a sum of Rs. 60 per uniform was determined by the respondent as stitching charges in consultation with the workers and an office order was passed that the

uniforms and the bills should be presented to the Committee by 30th April, 1982. It was also pleaded that no bill regarding stitching charges was submitted nor the uniforms duly stitched were shown to the officer concerned. It was further pleaded that the cycle allowance at the rate of Rs. 4.50 Paise per month was being paid to some employees of the respondent Committee who were required to move about constantly in connection with the affairs of the Municipality, but the duty of the Octroi Moharar was stationary in nature and they had to sit at the Octroi post for 8 hours and as such there was no merit in the demand of the cycle allowance to be paid to Octroi Moharars. It was further that the matter regarding revision, fixation of the grades of the Trust Employees was under the active consideration of the State Government.

4. The claimants in their rejoinder filed on 7th February, 1985 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 7th February, 1985:—

- (1) Whether the following categories of workmen of the Municipal Committee, Yamunanagar are entitled to the same scale of pay which the Haryana Government has sanctioned for these categories of employees with effect from 1st April, 1979? If so, with what details? OPW

- (1) Workmen of Fire Brigade, (2) Malies, (3) Road Gang Workmen.

- (2) Whether the workmen who were provided with winter Uniforms in April, 1982, are entitled to the sewing charges? If so, with what details? OPW

- (3) Whether the Octroi Moharars are entitled to Cycle Allowance? If so, with what details? OPW

- (4) Whether the peons belonging to Improvement Trust and working as peons in the Municipal Committee are entitled to same scale of pay as other peons of the Municipal Committee, Yamunanagar? If so, with what details? OPW

- (5) Whether any writ petition has been filed by the petitioner? If so, to what effect? OPM,

- (6) Whether the claimants did not file the stitching charges bill and the claim is not maintainable as pleaded? OPM

- (7) Whether the matter regarding the revision/fixation of grades of the Trust Employees is under the consideration of the State Government? If so, to what effect? OPM

6. It may be mentioned that the Management has examined one witness and documents Exhibit M-1 to M-4 have been tendered into evidence. The claimants have examined two witnesses. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1:

7. As regard Malies and Road Gang workmen, they have been given revised grades with effect from 1st April, 1979,—vide document Exhibit M-1 dated 16th October, 1980 and as such there remains no dispute between the claimants and the management regarding these two categories of employees.

8. As regards the workmen of Fire Brigades, MW-1 Shri Roop Lal Assistant stated that the grades of Fire Brigades Employees were revised with effect from 15th February, 1982,—vide Haryana Government notification, dated 15th February, 1982, copy Ex. M-2. WW-1 Shri Prem Singh, on the other hand, stated that the Fire Brigade's officials be given revised scale with effect from 1st April, 1979. In the written statement it was specifically mentioned that the Unions of various municipalities, including the union of the respondent Municipality, had filed writ petition No. 2580/84 in the Hon'ble Punjab and Haryana High Court demanding certain reliefs, including the matter concerning grades and the matter was, consequently, *sub judice*. In the rejoinder, it was mentioned that to the knowledge of the petitioners, no writ was pending and that even if any writ petition was pending, there was no bar to the adjudication of the relief claimed by the claimants. In the written statement a specific plea was taken by the Management that writ petition No. 2580/1984 was pending in the Hon'ble High Court of Punjab and Haryana, in which the relief regarding the revision of grade was prayed for. There is no specific denial by the claimants in the rejoinder. Consequently, due to the pendency

of a writ petition, the relief claimed by the claimants in this reference cannot be considered. It is thus held that the Malies and Road Gang workmen have been given revised grades with effect from 1st April, 1979 and their case is not in dispute but the case of the workmen of fire brigades cannot be considered due to the pendency of the writ petition as mentioned above. The issue is decided accordingly partly in favour of the workmen.

Issue No. 2:—

9. MW-1 Shri Roop Lal, Assistant stated that the stitching charges for each uniform were fixed as per settlement Exhibit M-3 at the rate of Rs. 60 per uniform, but the employees were bound to submit the bills upto 30th April, 1982. He further stated that the officials who submitted the bills, were paid the amount. On the other hand, WW-1 Shri Prem Singh stated that the stitching charges be paid at the rate of Rs. 200 for winter uniform supplied in 1982. Exhibit M-3 is the copy of the settlement, dated 27th February, 1982, in which it is recited that stitching charges at the rate of 60 per uniform had to be paid to the workers, provided the bills were produced by them. In view of this settlement, the claimants are entitled to stitching charges at the rate of Rs. 60 per uniform supplied in April, 1982, if the bills are produced by them, but they are not entitled to stitching charges at the rate of Rs. 200 per uniform. The issue decided accordingly partly in favour of the claimants.

Issue No. 3:—

10. MW-1 Shri Roop Lal Assistant stated that no cycle allowance is being paid to Octroi Moharars. WW-1 Shri Prem Singh stated that the Octroi Moharars were not being paid any cycle allowance, while the Octroi peons were being given this facility and that the Octroi Moharars were entitled to cycle allowance at the rate of Rs. 50 per month. WW-2 Shri Banwari Lal stated that Octroi Moharars had to go for duty to distant places and as such they were entitled to cycle allowance. MW-1 Shri Roop Lal Assistant admitted in cross examined that Octroi Moharars are posted on all the octroi posts according to the shift system. He further stated that Yamunanagar municipal limits extended to an area of 15 k.m. Consequently, the Octroi Moharars have to cover a distance of 15 k.m. according to shift system. It is thus apparent that some times the octroi Moharars have to go for duty upto a distance of 15 k.m. and some times between one k.m. to 15 k.m. In

the written statement, it is pleaded that some employees of the respondent committee are allowed cycle allowance at the rate of Rs. 4.50 per month who are required to move about constantly in connection with the affairs of municipality. Keeping in view the nature of duties being performed by the Octroi Moharars and the distance which they have to cover up to the extent of 15 k.m. as mentioned above, these officials be also given cycle allowance at the rate of Rs. 4.50 per month.

11. It was argued by the representative of the Management that the clerks were not entitled to cycle allowance and as such the Octroi Moharars could not be given this facility. The argument is without any force because the clerks have to attend the office which is situated at a fixed place, while the Octroi Moharars have to cover a distance upto 15 k.m. according to shift system as mentioned above and even the nature of duties of clerk and Octroi Moharars are not identical. Consequently the Octroi Moharars are entitled to cycle allowance at the rate of Rs. 4.50 per month from the date of the award.

Issue No. 4:

12. MW-1 Shri Roop Lal Assistant stated that the grades of Municipal Improvement Trust Employees had been revised from 1st April, 1985, —vide letter Exhibit M-4 WW-1 Shri Prem Singh stated that the peons of the Improvement Trust, who are working in the Municipal Committee Yamunanagar, should be given same grade, which was being given to the peons of the Municipal Committee Yamunanagar. In the letter copy Exhibit M-4, the peons of Improvement Trust have been given the scale of Rs. 300—430 and the peons employed in Municipal Committee are getting the same scale. Consequently the peons belonging to Improvement Trust are now getting same scale of pay with effect from 1st April, 1985 as peons of Municipal Committee, Yamunanagar. The issue is decided accordingly in favour of the workman.

Issue No. 5:—

13. As discussed in issue No. 1, due to the pendency of writ petition in the Hon'ble Punjab and Haryana High Court, the demand of the workman of Fire Brigade raised in issue No. 1 cannot be considered. The issue is decided accordingly in favour of the Management.

Issue No. 6.

14. As discussed in issue No. 2, the claimants are entitled to stitching charges at the rate of Rs. 60 per uniform, if the bills regarding the stitching charges are produced by them in the Municipal Committee, Yamunanagar. The issue is decided accordingly in favour of the Management.

Issue No. 7.

15. As discussed in issue No. 4 above, the grades of the peons belonging to improvement Trust have been revised with effect from 1st April, 1985. The issue is decided accordingly in favour of the Management.

16. In view of the above discussion, it is held that the Malies and Road Gang Workmen have been given revised grades with effect from 1st April, 1979 and their case is not in dispute while the case of the workmen of Fire Brigades cannot be taken into consideration due to the pendency of writ petition, as mentioned above. It is further held that Octroi Moharars are entitled to stitching charges at the rate of Rs. 60 per uniform supplied in April, 1982, if the bills are produced by them. It is also held that the Octroi Moharars are entitled to Cycle Allowance at the rate of Rs. 4.50 Piase per month from the date of the award. It is also held that the peons belonging to the Improvement Trust are now getting the same scale of pay with effect from 1st April, 1985 as the peons of Municipal Committee, Yamanagar. The award is passed accordingly.

Dated 29th April, 1986.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 259, dated 29th April, 1986.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section-15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-Lab./4107,—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of The Executive Engineer, Civil Construction Division III, P.T.P.P. H.S.E.B. (Panipat).

BEFORE SHRI R. N. BATRA, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 128/1982

between

SHRI SUMER CHAND ALIAS SOM RAM
WORKMAN AND THE MANAGEMENT OF
THE EXECUTIVE ENGINEER, CIVIL CON-
STRUCTION DIVISION-III, P.T.P.P., H.S.E.B.,
ASSAND (PANIPAT).

Present :

Shri Narinder Sakhun for the workman.

Shri S. S. Sirohi for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Sumer Chand alias Som Ram workman and the Management of the Executive Engineer, Civil Construction Division-III, P.T.P.P., H.S.E.B., Assand (Panipat), to this Tribunal for adjudication:—

Whether the termination of service of Shri Sumer Chand alias Som Ram was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement filed on 13th July, 1982, it was alleged that the claimant was appointed as T-Mate in 1976 and was promoted as Peon in 1979. It was further alleged that his services were terminated in an illegal manner due to which he was entitled to reinstatement with full back wages.

3. The management in its written statement dated 11th August, 1982 pleaded *inter alia* that the claimant forged his school leaving certificate by adding his name in place of some other person, whose name was rubbed off and that after holding the enquiry, the services of the claimant were terminated.

4. The claimant in his rejoinder filed on 16th September, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed by my learned predecessor on 16th September, 1982:—

- (1) Whether the termination of service of Shri Sumer Chand *alias* Som Ram, was justified and in order? If not, to what relief is he entitled? OPM.

6. It may be mentioned that the Management has examined one witness and documents. Exhibit M-1 to M-6 have been tendered in evidence. The claimant has examined two witnesses. After going through the entire evidence and hearing the representatives of both the parties, my finding on the above issue is as under:—

Issue No. 1.

7. It may be mentioned at the out-set that the representative of the Management stated that the Management was not relying on the enquiry and that the other evidence led by the management be read into evidence.

8. The Management has examined MW-1 Shri B. D. Tyagi U.D.C. who stated that the claimant was working as peon and his school leaving certificate was demanded from him in order to verify his date of birth. He further stated that certificate Exhibit M-1 was produced by the claimant which created suspicion in the mind of the Executive Engineer. He further stated that he was deputed to verify contents of the School Leaving Certificate. He further stated that in the School Certificate the name of the claimant was mentioned as Som Ram and not Sumer Chand and that ultimately the services of the claimant were terminated,—*vide* letter Exhibit M-6.

9. The claimant has examined WW-1 Shri Krishan Kumar Puri, Teacher Government Higher Secondary School, Kunjpura (Karnal) who stated that in the school leaving certificate,

Exhibit M-1, name was mentioned as Sumer Chand; while in the office copy of the school, the name was mentioned as Som Ram, but the date of birth in both the certificates was the same. WW-2 Shri Sumer Chand stated that he changed his name in 1980 and citation was published in Punjab Kesari dated 29th October, 1980. He further stated that he had informed regarding the change of the name to the Executive Engineer concerned. He further stated that his services were terminated and that he was unemployed since then.

10. A perusal of the above evidence would show that in the school leaving certificate Ex. M-1 dated 26th July, 1980, name was mentioned as Sumer Chand son of Shri Chatru Ram and his date of birth was mentioned as 25th December, 1954. In the office copy of the certificate lying in the school, the name was mentioned as Som Ram. There is no dispute regarding the other particulars given in the school leaving certificate Ex. M-1 and the office copy lying in the school. The claimant has stated that he changed his name from Som Ram to Sumer Chand in the year 1980 and citation was published in Punjab Kesari, dated 29th October, 1980. The certificate Ex. M-1 was obtained by the claimant on 26th July, 1980. It appears that the claimant, who was a layman and did not know intricacies of law was misguided by some person to get his name changed in the school leaving certificate from Som Ram to Sumer Chand because he had in fact changed his name from Som Ram to Sumer Chand. Otherwise, it was a foolish act on the part of the claimant to change his name in the certificate Ex. M-1 himself. The claimant again got his name changed in the school leaving certificate on 30th October, 1980, and the photostat copy of the said certificate has been placed on the file in which his name is shown as Sumer Chand *alias* Som Ram. From all this evidence, it is apparent that the claimant committed a folly by changing his name in the certificate Ex. M-1 from Som Ram to Sumer Chand. The certificate in fact related to him because he had changed his name from Som Ram to Sumer Chand. He had, therefore, no *male fide* intention because he was not using the certificate of any other person. Instead of getting his name changed from the School Authorities on 26th July, 1980 as Som Ram *alias* Sumer Chand he changed the name himself and later on obtained the certificate on 30th October, 1980 from the School Authorities on 30th October, 1980 in which he was described as Sumer Chand *alias* Som Ram. The claimant is guilty of misconduct

by changing his name himself in the school leaving certificate Ex. M-1, but, as already mentioned above, it was a foolish act on his part because he could get his name changed from the school Authorities when he had in fact changed his name from Som Ram to Sumer Chand. Under all the circumstances, the punishment awarded to claimant by terminating his service was a harsh one because he changed his own name in his own certificate in a foolish manner and he did not use the certificate of any other person as mentioned above. Consequently, the impugned order of termination is set aside and the claimant be reinstated but should be deprived of his back wages and his three increments should be stopped with cumulative effect for the misconduct. The award is passed accordingly.

Dated the 28th April, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 287, dated the 28th April, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-6 Lab./4108.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of Municipality, Yamuna Nagar.

BEFORE SHRI R. N. BATRA, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 469/1983.

between

THE MANAGEMENT OF M/S. MUNICIPALITY
YAMUNA NAGAR AND ITS WORKMEN

Present:

Shri N. R. Munjal, for the workmen.
Shri S. C. Bindra, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the Management of Municipality, Yamuna Nagar, and its workmen to this Tribunal for adjudication:—

- (1) Whether the sweepers are entitled to get house rent allowance at a flat rate of Rs. 20/- p.m. with effect from 1st January, 1980? If so, with what details?
- (2) Whether the workers are entitled to get gratuity? If so, with what details?

2. Notices were issued to both the parties. In the claim statement dated 5th September, 1984, it was alleged that Safai Karamcharis employed by the Municipality Yamunanagar were being wrongfully denied the house rent allowance and that they were entitled to this allowance at the rate of Rs. 20/- per month with effect from 1st January, 1980. It was further alleged that the workmen were entitled to gratuity under the provisions of Gratuity Act, 1972.

3. The Management in its written statement filed on 17th December, 1984, pleaded that the claim for gratuity was not maintainable under the Industrial Disputes Act, 1947. It was further pleaded that the Safai Mazdoors in Municipality throughout the State of Haryana were entitled to pay and allowances as per rule 14 of the Haryana Municipal Safai Mazdoor Services Rules, 1976, and that all the Safai Mazdoors were being paid house rent in accordance with the provisions of the said rules and instructions issued by the State Government in this behalf from time to time. It was further pleaded that there was no dispute on the principle of payment of house rent and that the respondent municipality was prepared to look into specific cases and of lapses, if any, if full details were furnished by the other party. It was further pleaded that there was separate set of rules relating to the Payment of Gratuity to the claimants and the provisions of Payment of Gratuity Act, 1972, did not apply in their case. It was further pleaded that provisions of Payment of Gratuity Act, 1972, had been extended to the Municipalities employing more than 10 workers with effect from 23rd January, 1982.

4. The claimants in their rejoinder, dated 7th February, 1985 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 7th February, 1985:—

- (1) Whether the sweepers are entitled to get house rent allowance at a flat rate of Rs. 20/- p.m. with effect from 1st January, 1980? If so, with what details? OPW
- (2) Whether the workers are entitled to get gratuity? If so, with what details? OPW.
- (3) Whether the claim for gratuity is not maintainable as pleaded? OPM
- (4) Whether the Safai Mazdoor of the Municipal Committee are governed by rule 14 of the Haryana Municipal Safai Mazdoor Service Rules, 1976? OPM

6. It may be mentioned that the Management has examined one witness and the documents Ex. M-1 to M-18 have been tendered into evidence. The claimants have examined two witnesses. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

ISSUE NO. 1:

7. MW-1 Shri Roop Lal, Assistant in the respondent municipality, stated that the instruction, regarding payment of House rent allowance to the claimants were contained in letters Ex. M-1 and M-2. He further stated that according to these instructions, 5 per cent of pay as House rent had to be borne by the concerned employee and the rate of house rent allowance was mentioned in the letter Ex. M-2. He further stated that the form copy Ex. M-3 had to be filled in by the concerned employee and that Municipal Committee was willing to pay House Rent allowance if the requisite form/hand receipts were furnished.

8. WW-1 Shri Banwari Lal claimant stated that the House Rent Allowance should have been granted with effect from 1st January, 1980. To similar effect is the statement of WW-2 Shri Bachana Ram.

9. A perusal of the above evidence would show that the claimants are entitled to house rent allowance as per instruction contained in letter Ex. M-1 dated 6th July, 1981 and the letter

dated 14th July, 1980 Ex. M-2. According to these instructions, the claimants whose revised scale of pay are upto Rs. 1,000/- per month have to pay House Rent at the rate of 5 per cent of pay from their own pockets in case of Government accommodation, while the other employees are entitled to payment of house rent allowance as per rules mentioned in the letter Ex. M-2, dated 14th July, 1980 with effect from 1st January, 1980. Provided that the particulars of the accommodation are given by them and 5 per cent of pay as house rent is borne by them. According to the instructions contained in Haryana Government letter No. 2607/2 FICW-80, dated 11th/12th September, 1980; the Haryana Government Employees residing in their own houses or in their parents houses may be sanctioned house rent allowance according to entitlement without having to submit rent assessment certificate. These instructions came into force with effect from 1st January, 1980. According to the Haryana Government letter No. 3723-2-FICW-81, dated 7th May, 1982, Haryana Government Employees drawing basic pay upto Rs. 1,160/- and residing in a rented accommodation will draw house rent allowance without producing rent receipt therefor. Consequently, the claimants are entitled to house rent allowance with effect from 1st January, 1980 as per scale mentioned in Haryana Government letter No. 11/25/80-FICW(2), dated 14th July, 1980, copy Ex. M-2 subject to recovery of house rent at the rate of 5 per cent of the pay from the employees in occupation of Government accommodation and 5 per cent of pay as house rent is borne by office. In view of the above discussion, it is held that the claimants are entitled to house rent allowance with effect from 1st January, 1980, in accordance with the instructions contained in the letters Ex. M-1, dated 6th July, 1981, and the letter dated 14th July, 1980, copy Ex. M-2, as mentioned above. The issue is decided accordingly in favour of the claimants.

ISSUE No. 2:

10. The representative of the management stated that the claimants were entitled to gratuity according to the provisions of Payment of Gratuity Act, 1972. In view of this admission, the issue is decided accordingly in favour of the workmen.

ISSUE No. 3:

11. In view of my finding on issue No. 2 it is held that the claim for gratuity is maintainable. The issue is decided accordingly against the Management.

ISSUE No. 4:

12. Rule 14 of Haryana Municipal Safai Mazdoor Services Rules, 1976 lays down that the members of the service shall be entitled to such pay and allowance as may from time to time be admissible to the Safai Mazdoors in the service of the State Government and the procedure for payment of pay and allowances shall be as laid down in Appendix I to these rules. There is no dispute regarding the application of these rules to these claimants, who were members of the Service. The issue is decided accordingly in favour of the Management.

13. In view of foregoing discussion, it is held that those claimants who are members of the service are entitled to house rent allowance as per rules with effect from 1st January, 1980 in accordance with the instructions contained in the letter dated 6th July, 1981, Ex. M-3 and the letter dated 14th July, 1980 Ex. M-2 as mentioned above and further that they are entitled to gratuity as per provisions contained in Payment of Gratuity Act, 1972. The award is passed accordingly.

Dated 28th April, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 288, dated 28th April, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 19th June, 1986

No. 9/8/86-Lab./4734.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the Management of

M/s Kegg Farms, Khandsa, Jaipur Road, Gurgaon.

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 136 of 1983

between

SHRI RAM SARAN DASS, WORKMAN AND
THE RESPONDENT-MANAGEMENT OF
M/S KEGG FARMS KHANDSA, JAIPUR
ROAD, GURGAON.

Present:—

Shri Shardha Nand for the workmen.
Shri M. P. Gupta for the respondent
management.

AWARD

This industrial dispute between the workman Shri Ram Saran Dass and the respondent management of M/s. Kegg Farms, Khandsa, Jaipur Road, Gurgaon has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/44-83/18508—13, dated 20th April, 1983 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Ram Saran Dass, was justified and in order? If not, to what relief is he entitled?

According to the claim statement and demand notice, the workman was appointed on 15th September, 1978 as a store keeper. His services were illegally terminated on 18th January, 1983 on 26th February, 1986 and suspension order was passed by Shri Sashi Kapoor who is not appointing and dismissing authority. Hence the suspension order was illegal. The Enquiry Officer was one of the Director of the company who was personally interested. The claimant communicated to the management,—vide letter dated 26th August, 1982 that the Enquiry should be handed over to impartial and neutral person. The enquiry officer put pressure on his son who was also working under him. Hence the enquiry was not fair and proper. The claimant was not paid any subsistence allowance from the date of suspension. This enquiry is null and

void. The petitioner was dismissed from the service. Hence the order of dismissal is illegal and void.

This claim has been contested by the management. It is alleged that he was posted at Ludhiana which was under the control of Head office. Hence the Punjab State was competent authority to refer the dispute. It is admitted that the claimant was appointed on 15th September, 1978 as Store keeper in the Farm of the respondent at Gurgaon. Later on he was posted at Ludhiana, who was working as Cashier with effect from 12th May, 1980. He was drawing Rs. 600 per mensem. This post was supervisory and executive post. He had authority to make calculations. He could also disburse payments. He was also authorised to issue receipts. Hence he was a supervisor. He failed to perform duty with due diligence. Hence he was dismissed with effect from 18th January, 1983 after issuing a due chargesheet and giving him full opportunity. It is denied that Shri Shashi Kapoor was not competent to issue the chargesheet. He was one of the partners. The claimant did not attend the enquiry. Hence it cannot be said that the enquiry officer was prejudiced against the workman. He did not attend the enquiry on one pretext or the other. The enquiry officer gave several notices to the claimant but in spite of service, the claimant did not turn up. His dues were also sent through registered post. According to the chargesheet he embezzled Rs. 12,550. This chargesheet was amended,—vide order dated 8th May, 1982. The claimant submitted his reply on 3rd July, 1982. It was not found satisfactory. Hence the enquiry was conducted regarding the chargesheet dated 8th June, 1982. Amended chargesheet was duly proved. Show cause notice was issued to the workman. He did not give any reply. Hence he was dismissed from service,—vide order dated 18th January, 1983.

In the replication the workman denied the averments raised in the written statement by the management. The parties contested the reference on the following issues:—

1. Whether the claimant is not a workman but a supervisor under the I.D. Act.
2. Whether the reference is bad in law?
3. Whether the enquiry was fair and proper?

4. As per reference?

I have heard the representatives of both the parties and gone through the evidence on record. My findings on the issues are as under:—

ISSUE NO. 1:—

It is contended that the claimant was cashier. He was authorised to receive payments and to issue receipt etc. This duty can not be said a supervisory duty. Hence it cannot be said that the claimant was Supervisor though he was drawing Rs. 600 per mensem. He was only a cashier and falls within the definition of the workman. Hence this issue is decided against the management.

ISSUE NO. 2:—

This issue is not contested by the parties. It is not disputed that this reference is bad in law. It is not disputed that the Haryana State is not competent to refer this dispute this issue is therefore, decided against the management.

ISSUE NO. 3:—

It has been admitted by the workman as WW-1 that he has written letters to the enquiry officer on 9th August, 1982. He has raised objections. He has also sent telegramme to the enquiry officer. He has also sent U.P.C. to the enquiry officer. He wrote letter Exhibit W-5 and W-6 to the Enquiry Officer. He has also written letter Exhibit W-9 to the enquiry officer. It is, therefore clear that the workman was duly served about the enquiry proceedings but he did not take part in the enquiry proceedings. Hence he was validly proceeded against *ex parte*. Letter Exhibit M-3 was written by the enquiry office that the enquiry will be held on 6th September, 1982. The workman filed the reply Exhibit M-16. It was also replied by the enquiry officer,—vide Exhibit M-17 dated 14th August, 1982. He was advised to appear before the enquiry officer on 6th August, 1982. The workman did not turn up. It was adjourned to 28th August, 1982. Telegramme Exhibit M-8 was written to him. Its receipt is Exhibit M-9. Letter Exhibit M-6 was also written to him to appear on 27th August, 1982 and on 27th August, 1982 he did not appear and he was rightly proceeded against *ex parte*. The chargesheet against the workman is Exhibit M-2. The enquiry proceedings is Exhibit M-15. According to the chargesheet on 27th January, 1982, the

workman handed over Rs. 47,000.00 to Oriental Bank of Commerce, Ludhiana to prepare a Demand Draft for Rs. 37,000.00. The excess amount was returned by the Bank,—vide their letter dated 3rd April, 1982. On 1st February, 1982 he reported a loss of Rs. 12,550.00 from the cash almirah. On preliminary enquiry the claimant had stated that Shri Dhan Bahadur chowkidar had stolen the keys and took away the amount. The workman,—vide Exhibit M-15 has stated that the charges were false and baseless. The enquiry officer had found both the charges proved. I have pursued the enquiry file. These charges. These charges were proved. One charge has been proved from the letter of the Bank and second charge stand proved from his statement. The workman in his statement as WW-1 has also admitted these two facts. He has admitted that cash was stolen from his custody. He has admitted that keys remains with him. He has also admitted that he had paid Rs. 10,000.00 excess to the Bank but due to his good behaviour this amount was returned. By this fact it is proved that he was guilty of mis-conduct. The enquiry was therefore, fair and proper. This issue is decided in favour of the management.

Issue No. 4:—

In view of the fact that the enquiry was fair and proper and also in view of fact that the workman has admitted that he had deposited Rs. 10,000 in excess with the bank and that the cash was stolen from his custody. It, therefore clearly shows that the workman was careless and negligent in performing his duties. It is contended that no suspension allowance was paid to the workman, during the suspension period. Hence the enquiry is vitiated. Even if the enquiry has been vitiated in that case, this court has to find that the charges have been proved. In the present case the admission of the workman proves that the workman was guilty of both the charges. Regarding the first charge of depositing Rs. 10,000.00 in excess with the Bank. This amount was refunded to the management. Hence the management did not lose, this amount. Regarding the remaining Rs. 12,550.00, it was stolen by the chowkidar from the cash almirah for which a report was lodged with the police. The workman was negligent and careless. If the chowkidar could not be arrested the workman could not be so much blamed. In these circumstances, I find that extreme punishment was awarded to him was dis-proportionate to his negligence carelessness and the same time taking

into consideration that the management has lost confidence in him. It is not possible to reinstate the workman. I think a compensation of Rs. 6,000.00 be paid to the workman.

The award is given accordingly.

Dated the 21st March, 1986.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad

Endorsement No. 1262, dated 17th May, 1986

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the I.D. Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

No. 9/8/86-6Lab./4735.—In pursuence of the Provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/s Vikash Forgings Pvt. Ltd., Plot No. 173, Sector 24, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 262 of 1984

between

SHRI SUDARSHAN, WORKMAN AND THE
RESPONDENT MANAGEMENT OF M/S
VIKASH FORGINGS PVT. LTD., PLOT NO.
173, SECTOR 24, FARIDABAD.

Present:—

Shri R. P. Singh, for the workman.

Shri M. P. Gupta, for the respondent
management.

AWARD

This industrial dispute between the workman Shri Sudarshan and the respondent management of M/s Vikash Forgings Pvt Ltd., Plot No. 173, Sector 24, Faridabad has been referred to

this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/2/36/84/29152—57, dated 7th August, 1984 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Sudarshan was justified and in order?
If not, to what relief is he entitled?

According to the demand notice, general demand notice was served on the management which irritated the management. The matter was settled in the conciliation proceedings and all the other workman were taken on duty. 35 workmen were retrenched. The dispute regarding retrenchment of 35 workmen is pending in the Industrial Tribunal, Haryana. On 14th May, 1983 when the workman went to join the duty, he was denied the duty on the pretext that the technical supervisor was not available. Again on 15th May, 1983, he reported for duty but he was not allowed duty and in the SHERE HARYANA dated 5th June, 1983 he found that he was suspended pending enquiry. He immediately sent reply with a copy to the Labour Officer. There was no enquiry and no allowance was paid and no permission to visit the factory. Ultimately his services were illegally terminated. This termination is challenged to be illegal improper, unjustified and against the principles of natural justice. Hence the workman has prayed for reinstatement with continuity of service and with full back wages.

This claim has been contested by the management objection is taken that the present dispute does not fall within the purview of Section 2A of the Industrial Disputes Act. On merits it is contended that due to serious and acute financial stringency and cancellation of orders, 35 junior most workmen were retrenched on 11th March, 1983 in conformity with Section 25-F of the Industrial Disputes Act, during the lunch interval on the same day, the President of Hind Mazdoor Sabha took meeting and instigated the workmen to struck work in sympathy with their fellow retrenched workmen. Hence all the remaining workers resorted to strike after lunch. Despite repeated notices and constant persuasion, the workmen did not come for duty. The Government of Haryana prohibited the strike on 12th May, 1983. Thereafter repeated notices were put on the factory gate. Copies were sent to the Labour Officer but the workman did not report for duty and on 17th May, 1983 a telegramme was sent to the union that the strike was prohibited by the Government and to advise the workmen

to resume duty immediately. Registered letter was also written on the same day but to no effect. On 23rd May, 1983 a notice was also published in the local Hindi Paper advising the strikers to resume their duty latest by 5th June, 1983 but the worker failed to resume duty. On 6th June, 1983 a chargesheet cum suspension letter was sent to the workman by registered post. It was also published in the Hindi Local Paper, but no written explanation was submitted by the workman. Hence show cause notice was sent to the workman on 29th June, 1983 by registered post to show cause why the workman should not be dismissed. This show cause notice was also published in the Local Hindi paper but no reply was submitted. The charges were grave so it was deemed detrimental in the interest of management, to retain the workman on duty. Hence the workman was dismissed on 2nd July, 1983. The objection is further taken that the workman is gainfully employed and that the management has lost confidence in the workman. It is, therefore, prayed that the dismissal of the workman be held legal and justified.

The workman has not filed any claim statement but he has filed his rejoinder. Objection is taken that the dispute is pending in the Industrial Tribunal, Haryana regarding general demand. Permission of the Industrial Tribunal has not been taken before dismissing the present workmen. Hence the order of dismissal is null and void. That the management has re-employed some of the chargesheeted workmen in order to create false evidence and hence it is a case of invidious discrimination. It is therefore, claimed that the dispute falls under the ambit of Section 2-A of the Industrial Disputes Act, 1947. It is further contended that on 11th March, 1983, the management deliberately failed to appreciate the demands of the workmen and denied the entry of the workmen on the factory gate. An intimation was sent to the Labour Officer and other officers. It is further alleged that denial of entry to factory gate tantamounts to lock-out but this lock out was not lifted inspite of letters written to the authority but the management succeeded in terming the lock out in strike. It is admitted that Government of Haryana prohibited the strike,—vide order dated 12th May, 1983. The workman lost faith in Hindi Mazdoor Sabha and hence there was no intimation to the workers to resume duty. On 14th May, 1983 a notice was pasted on the factory gate requiring the workman to resume duty. The workman reported for duty, but they were not allowed to resume their duty in the factory that the technical Supervisor

was not available. On 15th May, 1983 all the workmen again reported but they were not allowed to enter the factory with the help of Police of Muggesar. Intimation was also sent to the Labour Commissioner, S.S.P. Faridabad, D.L.C. Faridabad and Labour Minister and the Labour Officer, Faridabad, notice on 15th May, 1983 was also pasted but the workman were not allowed to join duty. The claimant after knowing the notice in the news paper reported for duty but the management again denied duty. The service of the chargesheet is also denied. It is also denied that the workman is gainfully employed. The reference was contested on the following issues:—

1. Whether the dispute does not fall under the purview of Section 2-A of the I.D. Act.
2. What is the effect of prohibition of strike of the workers by the Government of Haryana by the order dated 12th May, 1983?
3. Whether the claimant is gainfully employed?
4. As per reference?

Common question of law and fact is also involved in the remaining nine references of Shri Sharda Singh, Reference No. 265/84, Shri Ram Naresh Reference No. 260/84, Ram Bhawan Reference No. 267/84, Shri Suresh Chand, Reference No. 259/85, Shri Ganeshi Reference No. 266/85, Shri Ram Narain Reference No. 264/85, Shri Shre Singh Reference No. 258/85 and Ram Chander Reference No. 268/85 and Shri Hira Lal Reference No. 261/85. Hence all these references have been consolidated,—vide my order dated 18th March, 1985, 29th May, 1985, and 14th August, 1985 and consolidated proceedings have been taken in reference No. 262/85 of Shri Sudharshan. It is further mentioned that the demand notices, written statements and replications in all the ten references are cyclostyled.

I have heard the authorised representatives of both the parties and have gone through the entire evidence produced by the parties. My findings seriatim are as follows:—

Issue No. 1:—

This issue is neither pressed nor argued by the representative of the management. Hence this issue is decided against the management.

Issue No. 2:—

The Secretary of the Labour Department,—vide letter dated 12th May, 1983 Exhibit M-44 prohibited the strike. The main contentions of the management are that inspite of letter to the President of Hind Mazdoor Sabha Shri Subhash Sethi, the workman did not report for duty. Copy of this letter is Exhibit M-46, dated 17th May, 1983. Copy of this letter was also sent to the Labour Office. MW-2—Shri Ram Sarup has proved this fact. Exhibit M-36 is the copy of the letter pasted at the factory gate on 14th May, 1983 advising the workmen to join duty. Exhibit M-39 is also a second notice dated 15th May, 1983 pasted on the factory gate. Copy of this letter was also sent to the Labour Officer. It has been proved by MW-2—Exhibit M-42 is the letter pasted on the factory gate on 18th May, 1983 M-43 is the copy of 'Shere Haryana' dated 23rd May, 1983 advising the workman to join duty copy of which was also sent to the Labour Officer as has been proved by Shri MW-2—Shri Ram Sarup. Exhibit MW-3/5 is the copy of the notice signed by Shri B. M. Jain, office bearer of the workers Union. It is dated 17th June, 1983. It is written in this notice that dispute can be settled at any time and all the workman should remain at the factory gate. Inspite of all these notices, the workman did not join duty so the chargesheet Exhibit MW-3/7, dated 6th June, 1983 was sent to the workers through registered A.D. The postal receipt of which is Exhibit MW-3/8. It was also published in the newspaper on 13th June, 1983. Show Cause notice Exhibit M-103 to Exhibit M-111 were also served upon them. Their postal receipts are Exhibit M-112 to M-120. Show Cause notice were also published. Its copies are Exhibit M-121 to M-129. Deputy Labour Commissioner Shri O. D. Sharma as MW-5 has stated that the factory workers not ready to join their duty. He alongwith his inspector went to the factory to persuade them to join duty but the workers did not join their duty. Exhibit MW-5/A, letter was written by the Deputy Labour Commissioner to the Government on 1st April, 1983 that the workers were on strike since 12th March, 1983. All the above discussed evidence, clearly shows that the workers remained on strike in sympathy with other 32 workman who were retrenched. They were not willing to join duty inspite of the fact that the strike was declared illegal.

As against this evidence of the management, it is contended that the workers want to join duty on 14th May, 1983 and again on 15th May, 1983. They were not taken on duty. Hence letter Exhibit M-12 was written to the Labour Officer that they had gone to the factory but

they were returned after marking their presence on 15th May, 1983. They again want to join duty but the police of Mujassar did not allow them to enter the factory gate. It is also admitted by Shri Hira Parshad that after 15th May, 1983 they did not go on the factory gate for duty. This is also not proved that the workmen had gone to the factory to join duty on 14th May, 1983. It is stated that they had gone to join duty at 4.00 p.m. and none for the management was present. None for the management was expected at that time in the factory gate as these were not working hours. Reliance has been placed on the statement of MW-3—Shri Paras Ram who was Security Guard. He has stated that his duty was from 4.00 p.m. to 12.00 p.m. on the back side of the factory. Shri Satish Kumar called him and the workers were present. Shri Satish Kumar advised the workmen to come on next date and Shri Satish Kumar had talked with the management on the telephone. He can not be relied upon because on 15th May, 1983, the workmen were not allowed duty because he himself has admitted that he used to remain on duty from 4.00 p.m. to 12.00 p.m. Hence on 15th May, 1983 when the workers might have come for duty in the morning Shri Paras Ram was not expected to be on duty. He is therefore not reliable. It has not been contended in the demand notice that the workers were prevented to join their duty on 15th May, 1983 by the Police of Mujassar. This point has been raised for the first time in the replication. Moreover, the police records could be summoned to prove that the police was called in the factory by the respondent. Notices were published after 15th May, 1983 advising the workmen to join duty. Notices were also sent to the Union but it is admitted case of the workers that they did not turn up for duty after 15th May, 1983, though they might be present on the factory gate. The statement of Shri Hira Parshad is relevant on this point. He has also admitted that notice was published in the news paper. It is, therefore, admitted that the workers and the management appeared before the Labour Officer and the management advised the workers to resume duty. Individual registered letters were also sent to the workers at their home addresses. Some of the letters were received unserved. These letters are Exhibit M-47 to M-64. Their postal receipt are Exhibit M-56 to M-64. It is contended that the correct addresses of the workers have not mentioned in the letters. This contention of the representative of the workers is also not correct because these addresses are

the same as given in the applications for appointment of the workers. Notice was also published in the News Paper which is Exhibit M-46, inspite of this the workman did not join duty. Hence the chargesheet Exhibit M-36 to M-44 were issued to the workers,—vide postal receipt Exhibit M-85 to M-93. This chargesheet was also published in the news paper,—vide Exhibit MW-3/9. But no reply was submitted. Show cause notice Exhibit M-103 to M-111 were issued through registered post. Their postal receipts are Exhibit M-112 to M-120. This was also published in the News paper Exhibit M-21 to M-29. The workman did not submit his reply. Hence the workmen were dismissed from service,—vide letters Exhibit M-130 to M-138. M-139 to M-147 are the postal receipts. In spite of repeated warnings and notices, the workers did not join duty and strike was declared illegal. Hence no enquiry was to be held. This amounted to mis-conduct under rule 20 of the standing orders and hence in view of the judgement of Hon'ble Supreme Court in *Oriental Textile Finishing Mills, Amritsar vs. Labour Jullundur and others*; 1971-II-LLJ page 505 that the Tribunal was not justified in ordering their reinstatement and payment of wages merely on the ground that no domestic enquiry was held. In this case there was persistent and abudate refusal by the workmen to join duty notwithstanding the fact that the management had done everything possible to persuade them and gave them an opportunity to come back to work but they had without sufficient cause refused "which in our view would constitute misconduct and justify the termination of services. There was nothing that they could do in view of the unjustified attitude taken by the workers by staying away from work particularly after the notice". It has also been held by the Allahabad High Court in *Whellers Distributors Pvt. Ltd., vs. State of U.P. and others*; FJR-1974 Volume 46 page 126 that where a workman went on hunger strike in sympathy and support of his co-workers in another company. It was held that workman misconducted as his continued cessation of work affected his employer adversely and the employer was justified in punishing the workman for misconduct. Reliance has further been placed on the judgement of our own High Court in *Punjab Beverages Pvt. Ltd. vs. Industrial Tribunal, U.T. Chandigarh*; FJR-1985; Volume 66 page 422 "that individual notices were also sent under postal certificates. None of the workers expressed his willingness to resume work even through post in response to these notices. In such a situation the employer cannot wait for long to resume production particularly when the hot season was runn-

ing out. The persistent and obdurate refusal by the workmen to rejoin their duties, although afforded opportunity for the same left no course open to the employer except to employ substituted force or fresh hands who were on their jobs for the last about ten years. In such a situation the termination of the services of the workmen cannot be held to be illegal or unjustified and the award of the Industrial Tribunal reinstating the workmen with 50 per cent back wages must be set aside." In view of the above said law and fact I find that the conduct of the workers by stay out from duty in spite of the fact that the strike was prohibited by the Government amounted to misconduct and their services were validly terminated by the management.

Issue No. 3:

This issue is neither pressed nor argued by the parties. No evidence was given to prove that the workman was gainfully employed. Hence this issue is decided against the management.

Issue No. 4:—

Objection is taken that the workman remained suspended from 6th June, 1983 to 2nd July, 1983 when he was dismissed and that he has not been paid suspension allowance for this period. Hence the dismissal is illegal. It is admitted case of the parties that no suspension allowance was paid to the workers. None of the workmen have stated that they had gone to the factory to collect their suspension allowance. This suspension allowance became due from 1st July, 1983 and pay day was 7th July, 1983 but the workman was dismissed before that i.e. on 2nd July, 1983. Hence the worker was dismissed before the date of payment of suspension allowance. Hence the dismissal does not become illegal. Objection is taken in the replication that general demand notice of the workmen was pending for adjudication before the Industrial Tribunal, Haryana when these workers were terminated. Permission of the Industrial Tribunal was not obtained before terminating the services of the workman. Hence the order of termination is illegal and invalid. This point has not been argued by the authorised representative of the workman in the court. But the authorised representative of the management has contended that the order does not become illegal and unjustified in view of the judgement of the Hon'ble Supreme Court in Punjab Beverages Pvt. Ltd. vs. Suresh Chand

and another FJR-1978—Volume 52, page 342. It is held as follows:—

It must be held that the effect of a contravention of section 33 of the Act is not to make the order of discharge or dismissal of a workman void and inoperative. It is further held that the workman can proceed under Section 33-c(2), only after the Tribunal has adjudicated, on a complaint under section 33-A or on a reference under Section 10 that the order of discharge or dismissal passed by the employer was not justified and has set aside that order and reinstated the workman. It is further cleared that as there is no adjudication under Section 33-A, the validity of the dismissal could be adjudicated upon by a reference under Section 10 of the I.D. Act. The orders of dismissal is not valid if the so effected to.

The representative of the workman has nothing to say in rebuttal.

In view of my findings on the above said issue I give the award that the order of termination of the services of the workman Shri Sudershan and remaining 9 workers was legal and justified. They are not entitled to any relief.

Dated the 4th April, 1986.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1263, dated 17th May, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the I.D. Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

The 2nd July, 1986

No. 9/8/86-6Lab./4916.—In pursuance of the Provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute bet-

ween the workman and the management of M/s Tirupati Udyog Pvt. Ltd., 15, Miles Stone, Mathura Road, Faridabad:—

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 354 of 1985

between

SHRI RAM VINOD JHA, C/O SARIDABAD
KAMGAR UNION, 2/7, GOPI COLONY, OLD
FARIDABAD,—Workman

AND

THE MANAGEMENT OF M/S TIRUPATI
UDYOG PVT. LTD., 15, MILES STONE,
MATHURA ROAD, FARIDABAD

Present:—

Shri S. C. Srivastava, for the workman.

Shri Jagbir Bhadana, for the respondent-
management.

AWARD

This industrial dispute between the workman Shri Ram Vinod Jha and the respondent-management of M/s. Tirupati Udyog Pvt. Ltd., 15, Miles Stone, Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/131-83/28896-901, dated 11th July, 1985 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Ram Vinod Jha was justified and in order? If not, to what relief is he entitled?

According to the demand notice and claim statement, the workman was appointed on 27th November, 1979, as Assistant Welder. During the Court of his service, the workman never gave any change of complaint to the management. He was active member of the union. Hence the management started looking for an excuse. On 13th November, 1984 the workman was issued a suspension order. On 16th November, 1984, cooked up chargesheet was issued. The workman replied the chargesheet on 20th November, 1984 but the management appointed Shri Jagbir

Bhadana their own legal advisor as an enquiry officer. He was not impartial person. The workman was not allowed the facilities demanded by him. He was not allowed to be represented by a person of his choice. The workman was not supplied with the copy of enquiry report. Letter of dismissal has also not been signed by the competent person. Action of the management is an act of victimisation because of the union activities of the workman. In the demand notice, it is further contended that he was expelled from the enquiry proceedings on 27th February, 1985. His statements were not correctly recorded. The enquiry report is not based on the evidence.

The management has contested this claim. The date of appointment is alleged to be 1st July, 1980. It is alleged that domestic enquiry was fair and proper. It is denied that he has been dismissed because of union activities. It is further alleged that the workman committed serious acts of misconduct on 8th November, 1984, 9th November, 1984, 13th November, 1984 and 14th November, 1984. He used filthy language to the supervisor of the factory. It is further alleged that the claimant was given full opportunity to cross examine the management witnesses. On 21st March, 1985, he appeared in the enquiry proceedings appended his signatures and walked out from the enquiry proceedings without any cogent reasons. His request to bring an out-sider was dis-allowed because the workman could be represented only by a co-worker according to the Certified standing orders of the company. Show cause notice was given on 30th March, 1984. His explanation was not found satisfactory. His previous record was also considered. Hence he was validly dismissed on 7th April, 1985. Objection is further taken that if the enquiry was not found fair and proper the management to given an opportunity to lead evidence in this Court.

In his rejoinder, the workman has denied the averments raised by the management. The reference was contested on the following issues:—

1. Whether the enquiry is fair and proper?
2. As per reference?

I have heard the representatives of both the parties and gone through the evidence on re-

cord. My findings on the issues seriatim are as under:

Issue No. 1:

The first contention of the representative of the workman is that the workman was not allowed to be represented by an Advocate. The contention of the management is that according to the certified standing orders of the company, the workman can be represented only by a co-workman of his choice. The representative of the workman has relied upon the judgement of Hon'ble Bombay High Court between Ghatge Patil Transport Pvt. Ltd., and B. K. Esale and others; 1984-II-LLJ page 121. It is held that "in domestic enquiries, if the employee is refused a fair opportunity of putting forward his case, his request for being represented by an outsider or a union representative or a legal practitioner, then it cannot be termed only as a technical defect. However, this will depend on the facts and circumstances of each case. The judgement of hon'ble Supreme Court in the Board of Trustees of the Port of Bombay vs. Dalip Kumar has been cited. In the above said cases, the management was represented by a legally trained mind and the workman was denied the opportunity of being represented by a legally trained person. In the present case the personal officer of the company was not a legally trained person. According to clause 24(d) of the Certified standing orders of the respondent company, the workman can seek assistance of another workman of his choice. It is, therefore, clear that his demand to be represented by an advocate was rightly turned down.

The next contention of the representative of the workman is that the charges are vague and he was not bound to reply the vague charges and the enquiry is vitiated. He has relied upon the judgement of Hon'ble Supreme Court between Northern Railway Cooperative Credit Society Ltd., and Industrial Tribunal, Jaipur; 1967-II-LLJ—page 46. To appreciate the above said judgement of Hon'ble Supreme Court, it is necessary to reproduce the charges levelled against the workman contained in chargesheet Exhibit M-2.

According to chargesheet Exhibit M-2, the first charge is that on 8th January, 1984 and 9th November, 1984 during the general shift, he came on duty and left the place of work and sit outside with the other workers. On repeated requests of the supervisor, the workman did not return to the place of work. Due to this action of the workman no welding work was done in the factory in two days. Hence the production of the fac-

tory suffered. The second charge is that on 13th November, 1984 the workman came on general shift. His supervisor asked him to do welding work. At this the workman flew into a rage and lifted a slap and ran towards the supervisor and abused him and threatened him to break his legs if he spoke in future as the workman had many persons with him. The next charge is that on 14th November, 1984, the workman came on duty at 8.30 a.m. and the watchman Shri Bram Singh gave him the suspension letter. The workman took away all the four copies of the order and did not return any copy.

It is contended that all the charges are vague. It is not mentioned as to who were other workers whom he sat outside. It is contended that hence the charges are vague. In my opinion, the charges are not vague. According to the chargesheet, the workman himself did not sit on his place of duty. He did not do the work of welding and here was no welding work done during the two days and the production of the factory suffered. This cannot be said a vague chargesheet. Moreover in the judgement cited above, the workman had replied that the charges are vague. In the present case, the workman has never alleged that the charges are vague. If he had alleged that the charges to be vague, the management was at liberty to supply him the details. It is specific in the charges that the workman himself did not do any work for two days and the production suffered. This charge is very clear. I, therefore find that the charges are not vague as alleged.

The next contention of the representative of the workman is that the Chief Executive, who dismissed the workman, was not competent to dismiss him. He had relied upon the judgement of Hon'ble Supreme Court of India between Hindustan Brown Boveri Ltd., and their workman and another; 1968-I-LLJ—page 571, in this case according to the standing order 27 of the company, dismissal powers were reserved with the company. It was held that Works Manager had no power to dismiss the workman. In the present case, it is contended that according to clause I-(c) of the standing order of the company, only the manager could dismiss the workman. This contention of the representative of the workman has no force. Manager also includes any other officer directing, supervising and controlling the establishment of the factory in the absence of the manager. Moreover, in the present case, the person who dismissed the workman was Chief Executive. He was certainly not

below the rank of the Manager. Hence he was competent to issue the charge-sheet and dismiss the workman."

The next contention of the representative of the workman is that the enquiry is not based on the evidence recorded in the domestic enquiry. He has relied upon the statement of MW-2—Shri Bhange Ram, Supervisor. In the enquiry proceedings he has stated that the workman told him what was necessity to speak much, why he had come after becoming a NAWAB. It is contended that these words are not mentioned in the charge-sheet. This minor contradiction does not show that the entire evidence is false. Such minor contradictions used to occur as the memory of the man is short. From this minor contradiction it cannot be said that the charges are not proved. I, therefore find that the enquiry was fair and proper. This issue is decided against the workman.

Issue No. 2:—

The representative of the workman has contended that mere use of threatening language does not mean such mis-conduct that the workman should be dismissed. He has relied upon the judgement of Hon'ble Supreme Court of India: between Rama Kant Mishra and State of Uttar Pradesh and others: 1983-S.C. Cases (L & N) page 26. It is held that the punishment must be proportionate to the mis-conduct. Facts and circumstances of the case must justify dismissal. Dismissal for use of indiscreet, indecent or threatening language to superior only one in the Court of long un-blemished service, held dis-proportionately excessive, withholding of two increments was held to be proper punishment.

In the present case, the charges were that he left the place of work for two days and did not do any welding work. The production in the factory suffered. He also dis-behaved with the supervisor. If the workman does not work or slow down production, it is held to be major mis-conduct. Moreover it was repeated for two days. The workman also mis-behaved with the supervisor on 13th November, 1984. He took away all the copies of Suspension Order. I, therefore find that the misconduct was major and punishment of dismissal was not dis-proportionate to the misconduct of the workman. I, therefore, give the award that the dismissal of the workman was justified and legal. He is not entitled to any relief.

Dated the 20th May, 1986

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1315, dated the 24th May, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department Chandigarh as required under Section 15 of the I.D. Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

No. 9/8/86-6Lab./4924.—In pursuance of the Provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/s Tirupati Udyog Pvt. Ltd., 15, Mile Stone, Mathura Road, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 358 of 1985

between

SHRI DHANESHWAR CHAUDHARY, C/O
FARIDABAD KAMGAR UNION, 2/7 GOPI
COLONY, OLD FARIDABAD,—Workman

AND.

THE MANAGEMENT OF M/S. TIRUPATI
UDYOG PVT. LTD., 15, MILE STONE,
MATHURA ROAD, FARIDABAD

Present:—

Shri S. C. Srivastava, for the workman.

Shri Jagbir Bhadana, for the respondent-management.

AWARD

This industrial dispute between the workman Shri Dhaneshwar Chaudhary and the respondent-management of M/s. Tirupati Udyog Pvt. Ltd., 15 Mile Stone, Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/152-85/28889—94, dated 11th July, 1985, under Section 10(i)(c) of the Industrial Disputes Act,

1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Dhaneshwar Chaudhary was justified and in order? If not, to what relief is he entitled?

According to demand notice and claim statement, the workman was appointed on 22nd May, 1981. On 27th October, 1984, he was issued the chargesheet-cum-suspension letter which he replied on 13th November, 1984. On 2nd December, 1984, the respondent appointed Shri Jagbir Bhadana their legal advisor as Enquiry Officer. On 18th December, 1984 another false chargesheet was issued which was replied on 20th December, 1984. On 4th January, 1985 another false chargesheet was issued to the workman which was replied on 5th January, 1985. The enquiry officer started the enquiry proceedings, after writing letter on 1st January, 1985, but the enquiry officer did not turn up on 9th January, 1985. The worker demanded some facilities, but his demands were turned down on 19th January, 1985. On 5th February, 1985, the enquiry officer did according to his own wishes and no heed was paid to the worker's words. On 26th February, 1985 he was turned out from the proceedings. On 13th February, 1985 the enquiry officer did not turn up. He was again turned out on 27th February, 1985 and 1st March, 1985. He was also not allowed to be represented by an advocate. On 15th March, 1985 he was issued a show cause notice. But on 17th March, 1985, the claimant demanded some documents, but without giving him these documents, he was dismissed on 7th April, 1985. He has further alleged that the Chief Executive who signed the chargesheets dated 27th October, 1984, 18th December, 1984 and 4th January, 1985 has not signed the dismissal letter dated 7th April, 1985. The officer who passed the last order did not have the authority to do so. It is further alleged that his services have been terminated because of his union activities. He is the President of the Mill Committee. His work and conduct during the period of service was satisfactory. The workman has claimed reinstatement, with continuity of service and with full back wages.

The management has contested this claim. It is claimed that the workman was dismissed after holding a full fledged domestic enquiry. He was given full and fair opportunity to cross-examine the management witnesses and to produce defence. Objection is taken that there exists no industrial dispute. On merits it is

denied that his work and conduct was satisfactory. It is also denied that there is union of the workmen in the factory. It is claimed that the workman committed serious act of misconduct on 21st October, 1984, 26th October, 1984 and 27th October, 1984. He also committed serious misconduct on subsequent dates. Hence chargesheets were again issued to him on 18th December, 1984 and 4th January, 1985. It is denied that the reply was satisfactory. It is alleged that the workman was given full and fair opportunity to cross-examine the witnesses of the management. He was also given copy of day to day proceedings. The workman walked out from the enquiry proceedings on 26th February, 1985 and after that also he walked out from the enquiry proceedings many a times. Hence he was proceeded against *ex parte* on 6th January, 1985. It is further alleged the the workman was not allowed to be assisted by an outsider because the Certified Standing Orders did not provide that. According to the Certified Standing Orders, he could be assisted by a workman of his choice. It is further pleaded that a Show-cause notice was issued to him on 15th March, 1985. The reply of the workman was unsatisfactory. Hence he was dismissed on 7th April, 1985.

The workman has filed the rejoinder denying the averments of the management. The parties contested the reference on the following issues:—

1. Whether the enquiry is fair and proper?
2. As per reference?

I have heard the representatives of both the parties and have gone through the evidence on record. My findings on the issues *seriatim* are as follows:—

Issue No. 1:—

The first contention of the workman is that the workman was not allowed to be represented by an advocate. The contention of the management is that according to the certified standing orders of the company, the workman can be represented only by a co-workman of his choice. The representative of the workman has relied upon the judgement of Hon'ble Bombay High Court between Ghatge Patil, Transport Pvt. Ltd., and B. K. Etale and others; 1984-II-LLJ page 121. It is held that "In domestic enquires, if the employee is refused a fair opportunity of putting forward his case, his request for being represented by an outsider or a union representative or a legal practitioner, then it cannot be termed only as a technical defect. However, this will depend on the facts and circumstances of each case."

The judgement of Hon'ble Supreme Court in the Board of Trustees of the Port of Bombay vs. Dalip Kumar has been cited. In the above said cases, the management was represented by a legally trained mind and the workman was denied the opportunity of being represented by a legally trained person. In the present case the Personnel Officer of the Company was not a legally trained person. According to clause 24(d) of the Certified standing orders of the respondent company, the workman can seek assistance of another workman of his choice. It is therefore, clear that his demand to be represented by an advocate was rightly turned down.

The next contention of the representative of the workman is that the charges framed are vague, and he was not bound to reply the vague charges and the enquiry be vitiated. He has relied upon the judgement of Hon'ble Supreme Court between Northern Railway Cooperative Credit Society, Ltd., and Industrial Tribunal, Jaipur 1967-II-LLJ-page 46. To appreciate the above said judgement of Hon'ble Supreme Court, it is necessary to re-produce the charges levelled against the workman contained in charge-sheet Exhibit M-4.

According to the charge-sheet Exhibit M-4, the first charge is that on 21st October, 1984 and 26th October, 1984 he came on the general shift and did not sit on the place of duty but remained out-side the department and called some other workers also with him and asked them not to do work. He did not do his duty nor allowed other workers to do their duties inspite of repeated requests of the Supervisor. Due to the act of the workman production of the factory suffered. On 26th October, 1984 at 5.15 p.m. after duty hours, he collected outsiders on the factory gate and called bad name to Shri Mahesh and said that he would not be left alive. On 27th October, 1984 he came on the general shift and left the place of work and instigated other workers not to work, and went near the water tap along with other workers and did not allow them to work. At 3.00 p.m. the Supervisor asked them to do the duty but the workman refused to obey him. At this the workman got frustrated and said that neither he will do the work nor he will allow others to do the work.

It is contended that all these charges are vague. It has not been mentioned in the charge-sheet as to workmen was instigated. The name of the workers have not been mentioned. In view of the judgement cited above, it is contended that the charges are bad being vague.

The above said charge is not vague that other names of the workers have not been mentioned. He himself also did not sit on his duty place and did not do the work. He kept sitting near the water-tap. There is nothing vague in this regard. Even if remaining part of the charge-sheet is said to be vague, there is not vagueness about the facts that the workman himself did not do the work on the alleged time and dates.

The charges contained in the charge-sheet Exhibit M-5 are as follows:—

On 4th December, 1984 the workman marked his presence on the factory gate and sat in the room of the Security Guards. Bram Singh and Rohtash Singh prevented him to do so for which he got infuriated and refused to go out, and started calling other employees from inside. The workman abused Shri Bram Singh. Again said that he will see Shri A. S. Pandey. He was thinking to be a big.

The above said charges are also not vague the full particulars of the person, with whom he mis-behaved has been given. Though the name of the persons whom he called from inside have not been mentioned. His conduct with Shri Bram Singh and Shri Rohtash Singh amounted to mis-conduct.

The chargesheet Exhibit M-6 contained the following charges:—

On 2nd January, 1985 at 11.20 a.m., the claimant came to mark his presence. The Time Keeper Shri R. P. Kanodia noted the time of the workman in the attendance register. At this the workman snatched away the pen from the hands of the time keeper and erased what was written. The workman got infuriated and said that the timekeeper was not a D.C. and whatever the workman will like it will be done and abused the timekeeper and said that he was sitting on the gate of the factory with many persons and will see him when he comes out. He will get him kidnapped with his cycle. He did not know who Dhaneshwar Chaudhary was. At this time Shri Laxmi Kant Sharma and other Security Guards were also present. The workman also mis-conducted with them.

The above said charges do not suffer from any vagueness. They are specific and clear. Nothing has been hidden in the charges. The above said charges were also replied by the workman. His replies are Exhibit M-20, M-23, and Exhibit M-29. In these replies the workman never demanded any clarification. He did not say that the charges levelled against him were vague, whereas in the judgement cited above the workman had replied that the charges levelled against him were vague. Hence the enquiry is not vitiated that the charges were vague.

The next contention of the representative of the workman is that the Chief Executive, who dismissed the workman, was not competent to dismiss him. He had relied upon the judgement of Hon'ble Supreme Court of India between Hindustan Brown Boveri Ltd., and their workmen and another; 1968-I-LLJ-page 571; In this case according to the standing order 27 of the company, dismissal powers were reserved with the company. It was held that Works Manager had no power to dismiss the workman. In the present case, it is contended that according to clause I-(c) of the standing order of the company, only the manager could dismiss the workman. This contention of the representative of the workman has no force. Manager also includes any other officer directing supervising and controlling the establishment of the factory in the absence of the Manager. Moreover in the present case, the person who dismissed the workman was Chief Executive. He was certainly not below the rank of the Manager. Hence he was competent to issue the charge-sheet and dismiss the workman.

The next contention of representative of the workman is that the workman was always escorted by a gunman and was turned out from the enquiry proceedings. It has not been stated in the claim statement or the demand notice that he was always escorted by a gunman. Moreover, the workman has not produced any evidence that he was turned out from the enquiry proceedings. His bare statement remains uncorroborated. No fault has been found in the enquiry report. I have gone through the enquiry file. The enquiry officer had recorded the statement of 12 witnesses. The enquiry report is based on the evidence produced in the enquiry proceedings. I therefore, find that the enquiry was fair and proper. This issue is decided against the workman.

Issue No. II:—

The representative of the workman has contended that the more use of threatening language does not mean such mis-conduct that the workman should be dismissed. He has relied upon the judgement of Hon'ble Supreme Court of India; between Rama Kant Mishra and State of Uttar Pradesh and others; 1983-S.C. Cases (L & N) page 26. It is held that punishment must be proportionate to the mis-conduct. Facts and circumstances of the case must justify dismissal. Dismissal for use of indiscreet, indecent or threatening language to superior only once in the course of long un-blemished service, held dis-proportionately excessive, withholding of two increments was held to be proper punishment.

In the present case, the charges are that he left his work, instigated other workers from doing the work and also mis-behaved with the supervisor and the timekeeper. This mis-conduct was repeated many a times. So the mis-conduct in the present case is such that the dismissal was not dis-proportionate to the charges levelled against him. I, therefore, find that the punishment of dismissal was proper and justified. The workman is not entitled to any relief.

The award is given accordingly.
Dated, 16th May, 1986.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1324, dated 24th May, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.